IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4144 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAL PESTONJI MISTRY
Versus
COLLECTOR OF CENTRAL EXCISE

Appearance:
1. Special Civil Application No. 4144 of 2001
MR KH KAJI for Petitioner
MR MUKESH R SHAH for Respondents No. 1-2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 14/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The petitioner challenges the orders of the second respondent seeking a direction that the second respondent Tribunal should hear the petitioner's appeal afresh, taking into account the contentions raised by the petitioner in his written submissions which were filed before the respondent No.2.

2. In the petitioner's appeal before the Tribunal against the demand of Rs.52,63,999=43, the Tribunal held that the Collector had given detailed reasons for holding that the three units, namely, M/s Kinotone, M/s Cine Lamp and M/s International Talkie Equipment Company Pvt. Ltd. (all owned / controlled by one Adalja family, as stated in the Tribunal's order), were inter-connected and inter-linked and one Bharatbhai Adalja was having a major share of 80% in M/s Kinotone. It was observed that the petitioner - Jal Mistry was a paid Technical Director in M/s International Talkie Equipment Company Pvt. Ltd., which had three Adalja brothers as directors. It was noted that, most of the books of account, correspondence, files, stationary etc. of all the three units were maintained at one place, and that M/s Kinotone took loans from Adalja family who were associated with M/s Cine Lamp and M/s International Talkie Equipment Company Pvt. Ltd. For dismissing the appeal of the petitioner, the Tribunal simply observed; "M/s Kinotone has not advanced any satisfactory argument to dislodge the finding that they manufacture and clear complete cinema projectors without payment of duty. Hence the Adjudicating Authority has correctly clubbed the value of clearance of M/s Cine Lamp and M/s Kinotone and worked out the duty payable by M/s Kinotone after denying the benefit of small scale exemption. We, therefore, uphold the duty demand and penalty on M/s Kinotone".

3. The show cause notice dated 27th April 1980 was issued on these three units calling upon them to show cause to the Collector of Customs & Central Excise, Rajkot, as to why the duty of excise as mentioned therein in respect of the cinema projectors should not be recovered from them, and as to why penalty should not be imposed on these units under Rule 9(2) and 173Q(1) of the Central Excise Rules, 1944. The duty demand was confirmed in respect of the cinema projectors manufactured by M/s Kinotone on the ground that the benefit of exemption was not available to it since it was

not an independent manufacturer, but inter-linked and inter-connected with M/s Cine Lamp, which manufactured Arc Lamps and M/s International Talkie Equipment Company Pvt. Ltd., which were controlled / owned by the Adalja family. A penalty of Rs.5 lakhs was imposed on M/s Kinotone and Rs.50,000=00 on M/s Cine Lamp. Penalty of Rs.1 lakh was also imposed on M/s International Talkie Equipment Company Pvt. Ltd. The appeal of M/s International Talkie Equipment Company Pvt. Ltd. was allowed earlier by the Tribunal and penalty imposed on them was set aside on the ground that the imposition of penalty was under Rule 209A of the Rules which was not invoked in the show cause notice.

4. It transpires from the record that the petitioner had requested the Tribunal by his letter dated 15th November 1999 sent by Speed Post that the hearing of the matter may be fixed in the Bombay bench of the Tribunal. Several reasons were given in that application. The Tribunal did not consider or make any order on that application. It has also come on record that, on 17th January 2000, the petitioner sent detailed written submissions in support of his Appeal No. E/4397/93B, the hearing of which was fixed by the Tribunal on 27th January 2000. This was done without prejudice to his earlier request contained in the letter dated 15th November 1999, praying for transfer of the appeal to CEGAT, Mumbai Bench. It appears that the hearing was postponed to 15th March 2000 and the petitioner again, by his communication dated 4th March 2000 sent through courier, sent further detailed submissions to facilitate the Tribunal in considering the appeal, as mentioned in paragraph 2 of that communication. In paragraph 3 of that communication, the moot question was highlighted, which was, "Whether M/s International Talkie Equipment Company Pvt. Ltd. are the manufacturers?" According to the petitioner, the said company - M/s International Talkie Equipment Company Pvt. Ltd. were the manufacturers which was obvious from the material on record and the ratio of the settled cases mentioned on pages 24 to 27 of his earlier written submissions dated 17-1-2000. According to the petitioner, since M/s International Talkie Equipment Company Pvt. Ltd. was the manufacturer, M/s Kinotone cannot be treated as a manufacturer. The Tribunal was requested to pierce the corporate veil on the ratio of the decisions of the Apex Court mentioned in the representation.

5. In the representation dated 17-1-2000, apart from many other contentions raised therein, one important contention was raised to the effect that, M/s

International Talkie Equipment Company Pvt. Ltd. were the manufacturers within the contemplation of section 2(f) of the Central Excise Act. Reliance was placed on the decisions of the Supreme Court, in Shree Agency v. S.K.Bhattacharjee, reported in 1977 ELT J 168 (SC) = AIR 1972 SC 780, in Bajrang Gopilal Gajebi v. M.N. Balkundri & others, reported in 1986 (25) ELT 609 (SC), and of the Allahbad High Court in Phillips India Ltd. v. Union of India, reported in 1980 ELT 263 (Alhabad). The copies of the decisions of Bajrang Gopilal Gajebi and Phillips India Ltd. were annexed with the said written submissions as mentioned therein. According to the petitioners, the ratio of these decisions applied to M/s International Talkie Equipment Company Pvt. Ltd. on all fours and therefore, they were the real manufacturers of complete cinema projectors and liable to pay duty as demanded in the show cause notice as well as the penalties imposed. It was further stated that M/s Kinotone cannot be treated as manufacturer of the cinema projectors and for this, reliance was placed on the two decisions of the Tribunal, copies of which were annexed as Exhibit `Q' to the written submissions.

6. Both these written submissions were received by the Tribunal. It is, however, surprising to note that the Tribunal has not only not considered any of these contentions raised in these written submissions in support of his appeal by the petitioner, but has not even referred to these written submissions, in the impugned order made by it on 5th September 2000, dismissing the petitioner's appeal. It is more surprising that even after Miscellaneous Application No. E/ROM/13/2001 was made by the petitioner under section 35(C)(2) of the said Act, pointing out the attention of the Tribunal again to the earlier detailed written submissions and enclosing the postal receipts, courier receipts and copies of the letter as stated in paragraphs 4 and 5 of the Miscellaneous Application, the Tribunal has again not cared to refer to the detailed written submissions which the petitioner made in support of his appeal, while rejecting the said Miscellaneous Application by its decision dated 30th March 2001. Even though there was hardly any discussion on any of the contentions seriously raised by the petitioner in his written submissions, the Tribunal in paragraph 3 of its order made in the rectification application, gave itself a compliment by observing, "This finding has been reached by the Tribunal on an analysis of the evidence on record .....", when there was absolutely no analysis of the evidence done and the written submissions were not even referred while deciding the petitioner's appeal.

7. We, therefore, accept the sole contention which was raised on behalf of the petitioner and set aside the impugned orders made by the Tribunal in the petitioner's appeal and on his rectification application, and remand the matter to the Tribunal for re-consideration of the petitioner's appeal and a decision to be taken in accordance with law expeditiously. Since a contention is taken by M/s International Talkie Equipment Company Pvt. Ltd. is a real manufacturer, it will be open for the Tribunal to issue notice on that Company and hear it before taking any decision in the petitioner's appeal. Rule is made absolute accordingly.

MARCH 14, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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